

Deliberate and Unreasonable Refusal to Co-Operate Procedure

Purpose:

The purpose of this procedure is to set out the way in which Fareham Housing may choose to end any relevant homeless duties owed to applicants under the 1996 Housing Act Part 7, as amended, due to the deliberate and unreasonable refusal to co-operate with the conditions set out in their Personalised Housing Plan (PHP).

Although such action is allowed under s.193B(2) of 1996 Act, the consequences are likely to be severe and so careful thought needs to be given before considering using the provisions set out below.

Even in cases where it appears that there is non-cooperation, the presumption must be that this is not deliberate. Housing Options Officers must assess each case on its own merits, in conjunction with a Senior Officer if necessary, and if there is any doubt about either the motivations of the client or their ability to undertake the steps set out in their PHP, it will not be appropriate to invoke this procedure. Instead, Officers must consider what additional assistance can be offered to the applicant to enable them to comply with the terms set out, or if these terms are in fact reasonable and appropriate.

Only after this, and only if there is still a deliberate and unreasonable refusal to cooperate, should this procedure be used.

Scope:

This procedure covers all households who have made an application to Fareham Housing under the 1996 Housing Act, Part 7, and where the Authority has accepted either a 'prevention duty' under s.195(2) or a 'relief duty' under s.189B(2) and who, in the opinion of the Authority, are deliberately and unreasonably refusing to cooperate with one or more of the provisions set out in their PHP.

Procedure:

The Case Officer for each applicant is required to determine the appropriate steps that make up the PHP. This should be done in conjunction with the customer and agreement must be sought from them. It is also important that the Case Officer makes it clear which are mandatory actions and which are suggestions.

However, if agreement cannot be reached and the Case Officer is satisfied that the steps set out in the PHP are reasonable and necessary in order to prevent or relieve homelessness, the reasons for the difference of opinion must be recorded and detailed in the application notes.

It is also a legal requirement for the Case Officer to keep the PHP under regular review, and any steps that need to be amended, removed or added must be subject to the same agreement and must also be recorded in the application notes. While any change in circumstances will require a mandatory review, the PHP should be reviewed at least every 28 days. For more vulnerable customers or those facing particular problems, it is likely to be necessary to review the PHP more frequently.

If there has been no satisfactory progress toward the provisions set out in the PHP after 14 days (or longer if the circumstances require it) the Case Officer must attempt to contact the customer in order to determine if there are any issues preventing them from making progress or if they require further assistance in order to do so. It is likely that the steps in the PHP need to be reviewed at this time.

It is also important that a concerted effort is made to contact the customer to find out what the issues may be. Phone, e-mail and a letter should be tried, as well as trying to make contact through any support workers or appropriate relatives who may be able to assist.

If after an additional period of 14 days further attempts to contact the customer have not been successful the Case Officer may consider whether or not a formal warning is appropriate. Any decision such as this must be made with regard to sections 14.49 to 14.53 of the Homelessness Code of Guidance for Local Authorities (2018).

If it is considered that the conditions have been met to warrant issuing a warning letter, the Case Officer should do so at the earliest opportunity. The warning letter must list all the provisions within the PHP that the customer has refused to undertake and explain why the Case Officer believes that they have deliberately and unreasonably failed to co-operate. The Case Officer must also offer an appropriate timescale for the customer to undertake the requirements set out in the PHP.

The warning letter should also make clear to the customer what the implications are if they continue to refuse to co-operate (ending the relevant homelessness duty) and must offer a reasonable period for the applicant to engage. This period will be a minimum of 14 days but may be greater if it is felt the circumstances warrant it.

If, following the issuing of the warning letter, the applicant still does not carry out the required actions, and the Case Officer remains satisfied that there is no valid reason for the failure to do so, the Authority may consider issuing a formal notice to end the relevant homelessness duty.

If the Case Officer believes that a formal notice to end the relevant homelessness duty should be served, they must then refer the case to a Senior Officer who will consider the facts of the case and decide if a notice is to be served. If that Senior Officer was involved in the decision to serve the original warning, then the case must be referred to the Housing Options Manager for a decision.

If it is agreed that a notice will be served, the Senior Officer or Housing Options Manager may choose to delegate authority to issue the notice to another Housing Options Officer who was not involved in issuing the original warning.

Any notice will be treated as having been served upon the customer if it is served in person, by email or by post. If the Council does not currently hold an address or any contact details for the customer, the letter will be held on file and treated as being available to them for collection.

Conditions:

A notice to end the 'prevention duty' (s.195(2) of the 1996 Act) will not affect any subsequent duties that may be owed to the applicant under the Homelessness Reduction Act and if the applicant later becomes homeless, they will be entitled to a s.189B(2) 'relief duty'.

A notice to end the 'relief duty' (s.189B(2) of the 1996 Act), will mean that the s.193 (the 'main housing duty') will not apply. If the customer is in priority need and is not considered to be intentionally homeless they will still be owed a temporary accommodation duty under s.193C(4) of the same Act.

However, in addition to the usual prescribed methods, the s.193C(4) duty can also be brought to an end through the acceptance or refusal of a 'final offer' of a 6 month fixed term tenancy in the private sector.

If the customer is deemed not to be in priority need or if they are considered to be intentionally homeless, a notice to end the 'relief duty' will result in no further duty being owed.

Re-applications:

Any customer can make a further application if there has been a 'material' change in circumstances. However, a previous refusal to cooperate which has directly resulted in the customer's homelessness may be taken into consideration when deciding if they are intentionally homeless. If a fresh application is permitted, and as with any other application, a decision of intentionality cannot take effect until the relief duty has come to an end.